

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>MARC MANDEL and WALL STREET RADIO, INC. d/b/a WINNING ON WALL STREET,</p> <p>Defendants.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General RUSSELL B. KLEIN, First Assistant Attorney General*</p> <p>Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8th Floor Denver, Colorado 80203 Telephone: 720-508-6413 FAX: 720-508-6037 E-Mail: Russell.klein@state.co.us Registration Number: 31965 *Counsel of Record</p>	<p>Case No.</p>
<p>COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF</p>	

Plaintiff, Gerald Rome, Securities Commissioner for the State of Colorado, by and through his counsel, the Colorado Attorney General, and for his Complaint against the Defendants Marc Mandel and Wall Street Radio, Inc. d/b/a Winning on Wall Street alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff Gerald Rome is the Securities Commissioner for the State of Colorado (the “Commissioner”) and is authorized pursuant to § 11-51-703, C.R.S. to administer all provisions of the Colorado Securities Act (the “Act”).

Pursuant to § 11-51-602, C.R.S., the Commissioner is authorized to bring this action against Defendants and to seek temporary, preliminary, and permanent injunctive relief and other equitable relief against Defendants upon sufficient evidence that Defendants have engaged in or are about to engage in any act or practice constituting a violation of any provision of the Act.

2. Venue is proper pursuant to § 11-51-602(1), C.R.S. in the district court for the city and county of Denver, Colorado.

SUMMARY OF ALLEGATIONS

3. Operating out of Boulder, Colorado under the nickname the “Wizard”, Mandel manages the trading for the accounts of dozens of investors through the trading of stock over an online trading platform via a process sometimes referred to as “auto-trading”. In auto-trading, buy and sell orders are placed automatically based on an underlying system or program. The process is simple: Mandel maintains an account through a third-party broker-dealer platform and is set up as the Lead Trader. Other investors associate with Mandel and act as “Followers.” When Mandel executes a trade, the trading platform determines which investors are established as “Followers” of Mandel and then, within the parameters set on each individual account, executes identical trades on behalf of the Followers. Through this system of auto-trading, Mandel is able to effectively execute discretionary trades on behalf of his follower-clients.

4. The conduct of the Defendants is that of an investment adviser and investment adviser representative under Colorado law. Mandel charges a fee between \$1,500 and \$2,000 to join his Lead Trader program. In doing so, Mandel is, for compensation, engaging in the business of advising others as to the advisability of investing in, purchasing, or selling securities. However, Mandel is not licensed in the state of Colorado and in fact consented to a denial of his investment adviser license application in 2008. Thus he has violated the licensing provisions of the Act. Based upon these ongoing violations, the Commissioner seeks a permanent injunction enjoining the Defendants from future violations of the Act, disgorgement and restitution for violations of the licensing provisions of the Act.

THE DEFENDANTS

5. Defendant Marc Mandel (“Mandel”) is an adult male individual whose last known address is 1820 Pearl Street, Unit A, Boulder, Colorado 80306.

6. Defendant Wall Street Radio, Inc. d/b/a Winning on Wall Street (“WOWS”) is a Colorado corporation whose last known address according to the Colorado Secretary of State is 3401 Arapahoe Avenue, #204, Boulder, Colorado 80303. WOWS was originally incorporated under the name Wall Street Radio.Net, Inc. WOWS identifies Mandel as the Chairman and CEO of the company.

GENERAL ALLEGATIONS

7. Ditto Trade, Inc. (“Ditto Trade”) is a licensed broker dealer with a primary office located at 200 W. Monroe, #1430, Chicago, IL 60606. Ditto Trade is a wholly owned subsidiary of Ditto Holdings, Inc. and operates a website at <https://www.dittotrade.com>. As relevant to this case, the website serves as a trading platform to effectuate securities transactions on behalf of clients. The unique twist offered by Ditto Trade is the ability for certain individuals to be identified as “Lead Traders” and for other individuals to be identified as “Followers.”

8. When someone designated as a “Lead Trader” executes a trade on the Ditto Trade website, the trading platform will review its records to determine who is following the Lead Trader. At the same time, the trading platform also reviews a number of factors in order to determine whether the trade can be executed on behalf of the Follower including whether each Follower has sufficient buying power to execute the trade, the number of shares that each Follower is set to purchase (based upon individually customized settings), and the total number of shares to purchase. Ditto Trade then executes the combined transaction (the amount to be purchased for the Lead Trader, combined with the amount to be purchased by each Follower) and purchases the shares of stock in a block purchase. Following the acquisition of the shares, Ditto Trade then divides the shares purchased according to the original analysis and allocates the shares to the accounts belonging to the Lead Trader and the Followers.

9. Mandel is designated as a Lead Trader on Ditto Trade. Operating through his website for WOWS, Mandel offers prospective clients two types of

“membership packages.” The first package is a Lead Trader Membership Plan, and the second is a Master Membership Plan.

10. The Lead Trader Membership Plan follows the Ditto Trade formula. Mandel represents to investors on the WOWS website that he is able to use “Technical Analysis to Generate Returns of 20-30%/year through ACTIVE PORTFOLIO MANAGEMENT by a SUCCESSFUL Lead Trader” (capitalization in original). Following the Ditto Trade system, prospective clients for the Lead Trader Membership Plan are directed to set up an online trading account and execute trades following the Ditto Trade model. “Lead Trader initiates trade...shares allocated to all members at SAME initial price. Allocation based on SYSTEM approach for your bank size and risk tolerance.” Upon linkage and activation of the “Ditto All” or “full throttle” setting, Mandel is able to effectuate full discretion on behalf of his clients to the extent that they have sufficient funds to execute the trades.

11. This system is designed to encourage the investor to become passive after activating the account, sometimes called ‘set and forget.’ While the Follower who signs up for the plan ostensibly has the ability to turn the trading link on and off, the purpose of the Lead Trader Membership Plan is to allow the Lead Trader – Mandel – to execute trades on behalf of his Followers. The current price for those who sign up for the Lead Trader Membership Plan pay Mandel and WOWS \$1,500 per year (some have paid as much as \$2,000, and others have paid less than \$1,500).

12. The other membership option is the “Master Membership Plan.” Mandel markets the Master Membership Plan on the WOWS website as being “designed for traders/ investors who are taking an active role in managing their money.” The plan provides members with daily stock tips, weekly phone calls for “independent guidance and stock market education,” access to the WOWS trader portfolio, trade and trend alerts, access to the WOWS investment strategy (called the “WOWS rules-based system”), and weekly education such as reading charts and examples of the WOWS “system.” Those who sign up for the Master Membership Plan pay Mandel and WOWS \$500 per year and, in exchange, receive access to the analysis and reports promulgated by Mandel and WOWS, in addition to regular “hands-on guidance.” An expanded program called the WOWS Master Education Package is available for \$599.

Mandel's Securities Background

13. In 2007 and 2008, Mandel and an entity called JP Reynolds, LLC (primarily owned by Mandel, and signed for by Mandel) filed an application with the Colorado Division of Securities to become licensed as an investment adviser (Reynolds) and an investment adviser representative (Mandel) that resulted in an enforcement action by the Commissioner.¹ The allegations against Mandel and Reynolds were that they made numerous incomplete and inaccurate disclosures in the application materials, including (i) failure to disclose a non-discharged bankruptcy; (ii) failure to disclose numerous judgments, numerous arbitration matters brought by former clients, and a regulatory action brought by the state of California against his insurance license; and (iii) failure to disclose his prior NASD discipline. As a result of a settlement of this matter, the Securities Commissioner denied Mandel's (and Reynolds') application for licensure and imposed additional conditions upon the activity of Mandel including ordering Mandel to not associate with, control, or act as an investment adviser.

The Defendants' Activities

14. Mandel uses a variety of mediums to market his programs. For example, Mandel hosts a one-hour radio program, also called Winning on Wall Street, which is syndicated in a number of markets throughout the United States. In Colorado, the show is heard on KRCN-1060 AM Business Radio 1060 in the Boulder-Longmont area. According to the Wows website, the show is also available in Atlanta, Georgia; Boca Raton, Florida; Boston Massachusetts; and Phoenix, Arizona. The show also features a co-host named Harriet Fox. The Wows website states that the show is broadcast from 6pm to 7pm Eastern Time. The shows are archived and saved as podcasts on iTunes in order to be made additionally available to the public.

15. Together, Mandel and Wows also market their program on the website, touting their expertise in the securities industry. The Wows website states: "Marc Mandel, the Wizard attended the Wharton School of Business at

¹ Under the Colorado Securities Act, an application is not deemed to be submitted until it is complete (meaning all missing and/or requested information is provided to the Commissioner). The application was deemed complete on January 30, 2008.

the University of Pennsylvania where he received his Bachelors of Science in Economics degree. He was Senior Vice President of one of the largest Wall Street Investment Banking Firms and has been active in the financial services industry since 1975. He co-founded the financial public relations firm, Boulder Financial Group. Currently, he is Chairman and CEO of the Financial Services Company, Wall Street Radio.Net.” The website also claims that WOWS’ performance as an aggregate since October 11, 2004, has exceeded the market by +3828.25% “updated through Oct. 8, 2014.”

16. There are no restrictions or limitations on signing up with WOWS. From the main page, anyone can click on the “WOWS Store” tab and select “Buy Now” to purchase the WOWS Lead Trader Membership at \$1,500 per year. The “WOWS Store” provides below the following text: “Winning on Wall Street will guide you!” Clicking on the purchase button provides disclaimers, primarily limiting the rights and remedies available to the purchaser/investor and providing boilerplate market risk language. The Master packages offered by Mandel and WOWS can be purchased in the same manner. All a future client needs to do is select the appropriate links for purchase, provide personal information, billing information, and a credit card and they are able to buy the package.

17. Once an investor signs up for the program, they are able to become a Follower on Mandel’s Ditto Trade account in three steps. First, the Follower creates and funds an account on Ditto Trade; second, the investor submits a request to sign up as a Follower; third, Ditto Trade sends an e-mail to Mandel at his e-mail address of wizard@winningonwallstreet.com. The e-mail advises Mandel that he has a pending Follower, and provides him with instructions as to how to approve or deny the Follower.

18. Ditto Trade is aware of the concern regarding unlicensed investment adviser activity. Ditto Trade requires all Lead Traders to complete a Vendor Attestation Form where they “periodically ask ... Lead Traders to confirm that they are either registered investment advisers or are working within the guidelines of the publisher’s exemption from registration.” For example, Ditto Trade sent Mandel an e-mail on February 20, 2014 reminding him of this requirement.

19. Mandel and WOWS manage two types of accounts. One is categorized as an IRA account, and the other as an aggressive account.

20. In addition to providing broad-based services to those who sign up through his trading programs, Mandel also provides individualized advice. For example, on July 23, 2013, an investor told him “Also, I’m stuck in ISIS² ,, I’m going to buy under 30 bucks somewhere and hope for a upswing back to \$32.00 Any advise [sic] would be great here.” In response, Mandel told him “Hold ISIS.”

The Defendants as Investment Advisers

21. Despite representations to the contrary, WOWS and Mandel are acting as “investment advisers” and “investment adviser representatives” under the Act.

22. Under the Act, an “investment adviser” is defined as “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analysis or reports concerning securities.”

23. Under the Act, “investment adviser representative” includes any “individual who has a place of business in this state; who is a partner, officer, or director of an investment adviser; who occupies a status similar to or performs functions similar to those of a partner, officer, or director for an investment adviser; or who is employed or otherwise associated with an investment adviser who” engages in conduct such as making recommendation or rendering advice to clients regarding securities.

24. WOWS and Mandel performed investment advisory services for their clients. The structure of the Lead Trader – Follower system meets the definition of an investment adviser and investment adviser representative in that both defendants received compensation for the business of advising investors either directly or indirectly, regarding the advisability of investing in, purchasing, or selling securities. The Defendants engaged in the following conduct within the meaning of the Act:

² ISIS is the symbol for NASDAQ-traded Isis Pharmaceuticals.

- a. Received compensation via fees charged to investors to join the Wows auto-trading and investment advice program.
- b. Directly managed client trades when Followers allowed discretionary control through the “full throttle” setting.
- c. Advised others directly or through publications or writings as to the advisability of investing in, purchasing, or selling securities when clients opted out of the “full throttle” setting and were to receive trading alerts instead.

FIRST CLAIM FOR RELIEF

(Unlicensed Investment Adviser Activity)

(All Defendants)

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. By engaging in the conduct described above, Mandel and Wows acted as and continue to act as “investment advisers” or “investment adviser representatives” in that they are persons who, for compensation, engage in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analysis or reports concerning securities.

27. At no time relevant to this Complaint were Mandel or Wows licensed, or exempt from licensure, as “investment advisers” or “investment adviser representatives” or registered in any capacity with the Commissioner as required by §§ 11-51-401 and 402, C.R.S.

28. By engaging in the conduct described above, Mandel and Wows are in violation of § 11-51-401(1.5), C.R.S.

29. The Commissioner is entitled to an award of damages, interest, costs, and attorneys’ fees pursuant to § 11-51-604(2.5), C.R.S. and restitution, rescission, disgorgement, or other equitable relief on behalf of persons injured by the conduct of the Defendants pursuant to § 11-51-602(2), C.R.S., and is also entitled to a permanent injunction against the Defendants, their officers, directors, agents, servants, employees, successors and attorneys-in-fact, as may be; any person, directly or indirectly, through one or more intermediaries,

controls is controlled by, or is under the common control with the Defendants; and all those in active concert or participation with the Defendants, enjoining violations by them of the Colorado Securities Act, including §§ 11-51-401 and 402, C.R.S., by virtue of § 11-51-602, C.R.S.

WHEREFORE, the Commissioner requests relief as follows:

1. For preliminary and permanent injunctive relief against all Defendants, their agents, servants, employees, and successors; any person who, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with; and all those in active concert or participation with Defendants, enjoining the violations of all Defendants of the Colorado Securities Act or successor statute.

2. For judgment in an amount to be determined at trial against all Defendants for restitution, disgorgement and other equitable relief pursuant to § 11-51-602(2), C.R.S. For damages, rescission, interest, costs, reasonable attorneys' fees, and such other legal and equitable relief, pursuant to §§ 11-51-604(2)(a) and (4), C.R.S. as the Court deems appropriate. All of the preceding relief is sought on behalf of the persons injured by the acts and practices of all Defendants that constitute violations of the Act.

3. For such other and further relief as the court deems proper.

DATED October 30, 2014

JOHN W. SUTHERS
Attorney General

/s/ Russell B. Klein

RUSSELL B. KLEIN, 31965*
First Assistant Attorney General
Financial and Health Services Unit
Attorneys for Plaintiff
*Counsel of Record